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FEDERAL COMMUNICATIONS COMMISSION  
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of Equal Access  
and Interconnection  
Obligations Pertaining to  
Commercial Radio Services

CC Docket No. 94-54  
RM-8012

**Reply Comments of OCOM Corporation**

OCOM Corporation ("OCOM"), pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby submits its reply comments in the above-captioned proceeding. OCOM strongly supports the Commission's proposal to extend the benefits of equal access to the rapidly growing commercial mobile radio service ("CMRS") marketplace.

I. Introduction

OCOM, a reseller of interexchange telecommunications services to cellular subscribers, is in a unique position to comment on the extension of equal access requirements to CMRS providers. Originally a wholly owned subsidiary of Cellular Communications, Inc. ("CCI"), a cellular service provider, OCOM became an independent entity in 1991, when CCI formed a joint venture with PacTel Corporation which merged the parties' respective cellular interests in Ohio and Michigan. Since its spin-off, OCOM has functioned as an independent provider of interexchange telecommunications services. OCOM has also provided equal access consulting services to cellular carriers

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who implemented their own equal access programs.

Until the recent spin-off of PacTel from Pacific Telesis Group, the Joint Venture was subject to the equal access provisions of the Bell System divestiture decree, United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1992), aff'd sub nom. Maryland v. U.S., 460 U.S. 1001 (1993) ("MFJ"). Pursuant to the MFJ, the Joint Venture commenced an equal access balloting procedure in 1991 for its then current subscribers. By November 1992, when equal access conversion was complete, 58% of the Joint Venture's subscribers had selected OCOM as their long distance carrier. Subscribers of the Joint Venture on the Ohio portion of the Joint Venture's system continue to comprise the bulk of OCOM's customer base. OCOM is thus an example of successful emergence of competition in the interexchange marketplace when true equal access is implemented.

Following the recent spin-off of PacTel from Pacific Telesis Group, the Joint Venture is no longer required under the MFJ to offer equal access to OCOM and other interexchange carriers. To OCOM's knowledge, customers ordering service from the Joint Venture are no longer polled as to their interexchange carrier preferences, although the Joint Venture will honor specific interexchange carriage requests which customers initiate. Not surprisingly, without notification of interexchange carrier options, many new subscribers do not know that they can select their own interexchange carrier, and thus fail to do so.

II. The Extension of Equal Access to the CMRS Marketplace Will Serve the Public Interest.

In their respective Comments, several parties ("Commenters") have questioned the need to extend equal access requirements to CMRS providers, asserting that the cellular marketplace is currently, and the CMRS marketplace will become, so competitive that competition among CMRS providers does and will force providers to maximize customer choice for interexchange carriers. Commenters also allege that implementation of equal access in the CMRS will entail prohibitive and unnecessary costs.<sup>1</sup> These allegations are untrue, and ignore the realities of the CMRS marketplace.

Contrary to the views of Commenters, there is abundant evidence that wireless markets, particularly for cellular services, are not fully competitive, and that the introduction of equal access will reap substantial benefits to the public. On four separate occasions the Commission itself has determined that cellular systems have substantial market power and that the record evidence "does not support a conclusion that cellular services are fully competitive."<sup>2</sup> In its review of the proposed merger between AT&T and McCaw, the Department of Justice ("DOJ") investigated the level of competition in the cellular market and

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<sup>1</sup> See, e.g., Comments of Cellular Telecommunications Industry Association; Nextel Communications, Inc.

<sup>2</sup> Memorandum of United States in Response to Bell Companies' Motions for Generic Wireless Waivers, 59 FR 44176, 44180 (Aug. 26, 1994); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1467 (1994).

likewise found that "[w]ith extremely limited exceptions, there are no providers of mobile telephone services other than the two cellular carriers..." AT&T/McCaw Competitive Impact Statement, 59 FR at 44167. The DOJ also concluded that cellular operations were able to sustain supracompetitive prices for interexchange services despite their assertions that their equal access obligations hampered them competitively. This is because cellular systems can prevent their customers from reaching the interexchange carriers of their choice by programming their switches to send all long distance calls to one carrier. Id., 59 FR at 44182. Operators of systems can and do reduce competition for long distance service by denying access to competing carriers and requiring cellular subscribers to obtain long distance at prices not set by competition between those competing carriers. Id.

As an example, the DOJ noted in its Competitive Impact Statement that due to lack of effective competition in cellular service markets, McCaw Cellular, prior to its merger with AT&T, had been able to deny its cellular customers the ability to select their interexchange service provider. In those markets in which McCaw's systems were not controlled by a Bell Company that was subject to equal access requirements, McCaw provided interexchange service to its cellular customers on an exclusive basis and did not generally allow its customers to access other interexchange carriers directly. 59 FR at 44168-44169. Unfortunately, this situation is not likely to change in the near

future, at least in connection with independent cellular operators other than McCaw. In its competitive analysis of the AT&T/McCaw merger, the DOJ observed that:

As yet there are no SMR or PCS providers of wireless telephony generally available today. It is, of course, possible that at some point these new technologies will offer wireless service in competition with today's cellular duopolists. When it will happen and what effect, if any, it will have on competition in the market for cellular telephone service is now unknown. 59 FR at 44183.

Commenters are also mistaken in their assertion that equal access is already provided on a voluntary basis. While many cellular providers may honor a customer request for interexchange service, the initiative of interexchange carrier selection must come from end users who, in most cases, are unaware that they are free to designate the interexchange carrier of their choice. Absent equal access requirements, CMRS carriers do not and will not actively seek an election by customers, and are free to utilize the CMRS provider's own interexchange carrier. As a result, CMRS subscribers fail to select the interexchange carrier of their choice, even though many of them would prefer to do so.<sup>3</sup> There is no true equal access without notification of IXC options to CMRS subscribers.

Commenters' dire predictions that the costs of implementing

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<sup>3</sup> OCOM's substantial market share demonstrates that a large portion of CMRS subscribers prefer to select an independent interexchange carrier. See also, *DOJ Memorandum*, 59 FR at 44182 (cellular subscribers, particularly large businesses, value the choice that equal access gives them). See also, *Comments of AirTouch* at page 5.

equal access will be prohibitive are equally unsubstantiated and without foundation. As a matter of principle, of course, carriers are entitled to recover the legitimate and reasonable costs of equal access conversion, and should not be expected to offer such service at a loss. However, the history of equal access shows that the costs of conversion are not borne by local exchange carriers, cellular carriers or end users, but by interexchange carriers, who pay for and absorb such costs to remain competitive.<sup>4</sup> As a result of such competition, over the past decade, interexchange rates have dropped significantly. In the CMRS marketplace, the impact of equal access charges may be even less than that experienced by landline carriers, since non-cellular operators can purchase and install new equipment with built-in equal access capabilities, rather than having to make hardware and software modifications in existing equipment.

That is not to say, of course, that equal access costs are insignificant. However, it is quite common, and in many cases legitimate, for CMRS providers to charge IXC's for such costs, including: the creation of new customer records, interexchange carrier designation changes, and billing and collection. OCOM does not object in concept to the right of CMRS providers to impose charges for legitimate equal access expenses, so long as such charges are reasonable, substantiated and non-discriminatory. However, the allocation of implementation costs

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<sup>4</sup> When OCOM participated in the equal access process in Ohio markets, it paid substantial fees to the cellular carrier to cover equal access implementation costs.

to interexchange carriers negates the argument that the costs of equal access will be so burdensome on CMRS providers that implementation should not be mandated.

### III. Implementation of Equal Access for CMRS Providers Should Mirror Landline Equal Access Rules.

The fundamental requirements for equal access should be the same in both the landline and mobile service markets. OCOM applauds the Commission's tentative decision to impose presubscription and balloting rules for cellular providers similar in scope to those proposed by Bell Atlantic, but urges that these rules be extended to all other CMRS providers, in the interests of regulatory parity. Specifically, the Commission should ensure that the implementation of equal access in the CMRS marketplace should entail certain essential elements:

1. the balloting of all existing and new customers of CMRS providers,<sup>5</sup> even before equal access is fully implemented (It is OCOM's experience that a signed authorization form prior to implementation heightens customer awareness of their freedom to use the interexchange carrier of their choice, and increases the number of subscribers who affirmatively choose an IXC);
2. the inclusion of a list of all available interexchange providers in such balloting;
3. a set time table of no longer than 180 days for balloting, and 21 months for equal access conversion;<sup>6</sup>

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<sup>5</sup> Only CMRS operators currently explicitly offering IXC choice to their subscribers for a set period of time (for example, three years), with all potential IXC providers listed on the customer CMRS application or otherwise fully disclosed to customer at the point of sale, should be excluded from the requirement to ballot their existing customers.

<sup>6</sup> In addition to the necessity to initiate competition as quickly as possible, OCOM has discovered that extending the equal

4. a fair and proportionate allocation of customers who have not chosen a specific interexchange carrier; and

5. a flat prohibition against discrimination by CMRS providers among interexchange carriers with respect to the quality, type and price of access provided.

OCOM also supports the proposals of MCI and AT&T to require the release to interexchange carriers by CMRS providers of all customer base information, including but not limited to information needed by the IXC's to bill customers. OCOM supports the Commission's observation that "[a]lthough cellular carriers may not control a bottleneck to local access service, they, like the landline LECs, may be the sole source of certain information necessary for the correct and accurate billing and collection of interexchange calls originating on their networks." Notice, para. 99. However, even if the CMRS provider furnishes billing for the interexchange carrier, it is the interexchange carrier that provides customer service on interexchange matters. The interexchange carrier needs subscriber information to provide efficient and effective service.<sup>7</sup> Such information includes:

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access implementation process inevitably increases the costs associated with implementation. Those costs are largely borne by IXC's.

<sup>7</sup> CMRS operator retention of customer information is also a barrier to competition on many levels. If the IXC lacks the information necessary to provide good customer service, this skews competition towards the IXC selected by the CMRS carrier, especially if the CMRS carrier is providing its own IXC service. Releasing customer information, whether directly to the IXC or through a third party mailhouse, also allows for IXC customer education, as well as for competitive marketing of IXC services. OCOM has discovered that one round of information sent to subscribers is often insufficient to educate consumers regarding the opportunities to select a competitive interexchange carrier.



customer name, company name, complete address, contact phone number, ANI, billing cycle, activation date, activation location, call detail records (from the cellular switch), account number, bi-monthly CARE records, and quarterly reports from the cellular switch. This competitive issue may only be addressed by the adoption of rules requiring full access for interexchange carriers to database information on their customers with respect to the above items, and the extension of such rules to all CMRS providers.

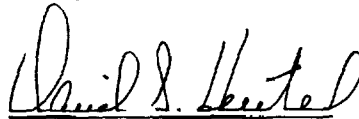
Finally, OCOM fully supports the adoption by the Commission of a rule requiring the provision of billing and collection services to interexchange carriers by CMRS providers who provide such services to the interexchange carrier of their own choice, or who provide their own interexchange services. Such a requirement would fall well within the Commission's Title II and ancillary jurisdiction, and would serve the public interest by promoting competition, deterring discriminatory practices, and simplifying billing and collection services for end users.

WHEREFORE, OCOM CORPORATION respectfully urges the Commission to extend equal access requirements to the CMRS marketplace as proposed herein.

Respectfully submitted,

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By:



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October 13, 1994

**CERTIFICATE OF SERVICE**

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